



DECISION COVER SHEET

☒ ACTION BY: Public Members Only

☐ ACTION BY: All Members

To : BOARD MEMBERS

Date: March 2, 2018

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: ASIAN PACIFIC INDUSTRIES, INC., dba JAGUAR LAND ROVER STEVENS CREEK v. JAGUAR LAND ROVER NORTH AMERICA, LLC
Protest Nos. PR-2530-17, PR-2531-17, PR-2532-17 and PR-2533-17

ARBM, INC. DBA LAND ROVER LIVERMORE v. JAGUAR LAND ROVER NORTH AMERICA, LLC
Protest Nos. PR-2543-17 and PR-2544-17

ARBM, INC. DBA JAGUAR LIVERMORE v. JAGUAR LAND ROVER NORTH AMERICA, LLC
Protest Nos. PR-2545-17 and PR-2546-17

BRITISH MOTOR CAR DISTRIBUTORS, LTD., DBA JAGUAR SAN FRANCISCO v. JAGUAR LAND ROVER NORTH AMERICA, LLC
Protest Nos. PR-2547-17 and PR-2548-17

BRITISH MOTOR CAR DISTRIBUTORS, LTD., DBA LAND ROVER SAN FRANCISCO v. JAGUAR LAND ROVER NORTH AMERICA, LLC
Protest Nos. PR-2549-17 and PR-2550-17

TYPE: Vehicle Code section 3060(b) Modification
Vehicle Code section 3065.1 Incentive Program

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: September 15, 2017 and November 14, 2017
- MOTIONS FILED: Respondent's Motion to Dismiss for Lack of Jurisdiction
- COUNSEL FOR PROTESTANT: Gavin M. Hughes, Esq.
Robert A. Mayville, Jr., Esq.
Law Offices of Gavin M. Hughes
- COUNSEL FOR RESPONDENT: Colm A. Moran, Esq.
John J. Sullivan, Esq.
Hogan Lovells US LLP

EFFECT OF PROPOSED ORDER: The Proposed Order grants Respondent's Motion to

Dismiss and allows the dismissal with prejudice of the consolidated modification protests (Nos. PR-2530-17, PR-2532-17, PR-2544-17, PR-2546-17, PR- 2548-17 and PR-2550-17.)

The Proposed Order grants Respondent's Motion to Dismiss and allows the dismissal without prejudice of the consolidated incentive protests (Nos. PR-2531-17, PR-2533-17, PR-2543-17, PR-2545-17, PR- 2547-17 and PR-2549-17.)

Background Findings

- The 12 protests before the Board have been filed in behalf of three dealerships all of which have common ownership. Each dealership has separate franchises for Jaguar as well as Land Rover vehicles.
- Jaguar Land Rover North America LLC ("JLRNA"), the franchisor for both Jaguar and Land Rover, has an incentive program it calls the Business Builder Bonus Program ("BBBP" or "Program"). There is no dispute that the Program is an incentive program applicable to both the Jaguar and Land Rover franchises and that JLRNA has modified some of what it calls the "components" of the Program.
- Protestants allege that the Program is part of each franchise thus modification of the Program is a modification of their franchises. Each dealership has filed two Section 3060(b) "modification protests", one for their Jaguar franchise and one for their Land Rover franchise, for a total of six modification protests.
- Protestants also allege that the Program, as an incentive program, is subject to Section 3065.1 and that JLRNA has failed to comply with the provisions of that section. Each dealership has filed two Section 3065.1 "incentive protests", one for their Jaguar franchise and one for their Land Rover franchise, for a total of six incentive protests.

JLRNA's Motion to Dismiss and Proposed Order

Re: 3060(b) Modification Protests:

- For the Board to have jurisdiction to hear and consider a protest purportedly filed pursuant to Section 3060(b) there must be (1) a modification of the "franchise" and (2) the modification must substantially affect the franchisee's sales or service obligations or investment.
- JLRNA seeks dismissal of the six modification protests as it asserts that the modification of the incentive program does not constitute a modification of the franchise.
- The ALJ found that the franchises for Jaguar and Land Rover vehicles consist of the "Dealer Agreement" as well as the "Standard Provisions" (for Jaguar or Land Rover) and

the “Performance Agreement” (for Jaguar) or the “Letter of Intent” (for Land Rover). However, the ALJ found that the terms of the Program (an incentive program) are not part of either franchise, thus modification of the Program does not constitute modification of the franchise.

- As there is no modification of the franchises the Proposed Order would dismiss all six of the 3060(b) modification protests with prejudice.

Re: 3065.1 Incentive Protests

- JLRNA’s Motion to Dismiss the incentive protests asserts that they do not allege facts that give rise to protest rights pursuant to 3065.1.
- The Incentive protests allege that JLRNA has unlawfully withheld incentives owed Protestants and that JLRNA’s refusal to pay is based in part upon a deliberately discriminatory sales performance standard, which unreasonably discriminates against Protestants, along with overly-broad assigned dealer territory designed to overstate Protestants’ facility requirements, sales objectives and customer pay objectives. However, these are not the types of circumstances which give rise to protest rights per Section 3065.1.
- Protestant’s pleadings filed in opposition to the motion to dismiss do allege circumstances that may indicate a failure of JLRNA to comply with the provisions of Section 3065.1 but these are not contained in the protests.¹
- The ALJ concluded that JLRNA’s Motion to Dismiss should be granted as to the incentive protests as they do not allege conduct or circumstances indicating a failure of JLRNA to comply with the provisions of 3065.1. However, as it is possible to amend the incentive protests to allege facts or circumstances that would be within the provisions of Section 3065.1, the Proposed Order would dismiss the incentive protests without prejudice.

RELATED MATTERS:

- Related Case Law: None.
- Applicable Statutes and Regulations: Vehicle Code sections 331.1, 3050, 3060, and 3065.1.

¹ These contentions in Protestants’ Opposition include failure to disapprove claims in writing within 30 days, failure to provide a reasonable appeal process and failure to provide an opportunity to cure noncompliance with claims submission requirements.